

S/N: 09/836,045  
Reply to Office Action of March 18, 2003

Atty Dkt No. RPC 0544 PUS

### **Remarks**

Claims 1-36 were pending in this application. Claims 1, 14-16, 24-25, 28, and 36 have been amended, new claims 37-39 have been added, and no claims have been canceled. Reconsideration of this application is respectfully requested in light of the above amendments and the following remarks.

#### **Rejection of Claims 1-36 Under 35 U.S.C. § 102(b)**

Claims 1-36 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,842,572 issued to Apps et al. ("Apps '572"), U.S. Patent No. 5,651,461 issued to Apps et al. ("Apps '461"), U.S. Patent No. 5,529,176 issued to Apps et al. ("Apps '176"), U.S. Patent No. 5,501,352 issued to Apps ("Apps '352"), U.S. Patent No. 5,487,487 issued to Hammett ("Hammett"), U.S. Patent No. 4,978,002 issued to Apps et al. ("Apps '002"), and U.S. Patent No. 4,899,874 issued to Apps et al. ("Apps '874").

In this Office Action, the Examiner now explains his position regarding the divider walls of each of the above references, stating that:

"Each of the references discloses a low depth bottle tray having an interior grid structure comprised of at least ten walls (four extending longitudinally and six extending transversely to the container) and three interior columns, a divider wall includes two of the ten walls which are parallel to each other and spaced transversely from each other and are transversely aligned, a divider wall could also include two of the ten walls which are longitudinally aligned with each other (either aligned longitudinally with respect to the container or transversely with respect to the container). A divider wall could also include two of the ten walls which are perpendicular with respect to each other. Hammett ('487) discloses ribs 30 which could be considered to form with the wall from which it extends a 'double walled construction'."

(Office Action dated March 16, 2003; Page 2)

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Applicant appreciates the Examiner's explanation, and has amended independent claims 1, 14, 24-25, 28, and 36 to further prosecution in this case. Specifically, claim 1 has been amended to recite "each divider wall including two spaced apart, generally parallel surfaces extending between the at least one interior column and the wall structure." Claim 14 has been amended to recite "each first divider wall including two spaced apart, generally parallel surfaces extending between first and second interior columns and each second divider wall including two spaced apart, generally parallel surfaces extending between one of the interior columns and the wall structure," with claims 24 and 36 amended similarly. Likewise, claim 25 has been amended to recite "each divider wall including two spaced apart, generally parallel surfaces which continuously join a first column portion and a second column portion," and claim 28 has been amended to recite "each divider wall including two spaced apart, generally parallel surfaces which interconnect a first one of the wall and interior columns with a second one of the wall and interior columns." None of the Apps '572, Apps '461, Apps '176, Apps '352, Hammett, Apps '002, or Apps '874 references disclose or suggest divider walls which include two spaced apart, generally parallel surfaces extending between the same two columns or the same column and the wall structure as disclosed and claimed by Applicant.

Therefore, Applicant believes that independent claims 1, 14, 24, 25, and 28 are patentably distinguishable over the above references. Accordingly, reconsideration and withdrawal of the rejection of these claims and their corresponding dependent claims under 35 U.S.C. § 102(b) is respectfully requested.

**Rejection of Claims 1-36 Under 35 U.S.C. § 102(e)**

Claims 1-36 have been rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,073,793 issued to Apps et al. ("Apps '793"). As above, Applicant asserts that Apps '793 does not disclose or suggest divider walls which include two spaced apart, generally parallel surfaces extending between the same two columns or the same column and the wall structure as disclosed and claimed by Applicant in amended claims 1, 14, 24-25, 28, and 36. Accordingly, these claims are believed to be patentably distinguishable over Apps

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'793, and Applicant respectfully requests reconsideration and withdrawal of the rejection of these claims as well as their corresponding dependent claims under 35 U.S.C. § 102(e).

**Rejection of Claims 1-36 Under 35 U.S.C. § 103(a)**

Claims 1-36 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Apps '793, Apps '572, Apps '461, Apps '176, Apps '352, Hammett, Apps '002, or Apps '874 in view of U.S. Patent No. 6,047,844 issued to McGrath ("McGrath") and U.S. Patent No. 3,334,767 issued to Cornelius et al. ("Cornelius").

In this Office Action, the Examiner now explains that "this rejection is made insofar as the anticipation rejection doesn't disclose a two-wall divider wall where the two walls are parallel to each other and spaced transversely of each other and connected to the bottom wall and connected to at least two of the same side walls, end walls, or interior columns" (Office Action, Page 3). Again, Applicant appreciates the Examiner's explanation, and Applicant has amended independent claims 1, 14, 24-25, 28, and 36 accordingly as described above in response to the rejections of claims 1-36 under 35 U.S.C. § 102(b) and (e). As such, Applicant believes that these claims are patentably distinguishable over the cited primary references. However, the Examiner argues that McGrath and Cornelius teach such a feature. Applicant respectfully disagrees, and asserts that there is no motivation or suggestion to combine McGrath or Cornelius with the primary references for the reasons stated below.

Claims 1, 14, 24-25, and 28 require that "the divider walls, the at least one interior column, the base, and the wall structure define a plurality of bottle retaining pockets, each pocket including at least one divider wall and sized to receive a single bottle therein." Claim 36 has been amended to recite "wherein the interior grid structure, the base, and the wall structure together define a plurality of bottle retaining pockets capable of providing four lateral contact points for each bottle received therein." As such, Applicant has defined "divider walls" to be interior walls which form part of a retaining pocket sized to hold a single bottle.

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The Examiner asserts that “[i]f the pocket receives more than one bottle, the pocket is still sized to receive a single bottle” (Office Action, Page 4). Applicant respectfully disagrees. Applicant is not reciting that the bottle retaining pocket is sized to receive *a* bottle, but rather is reciting that the bottle retaining pocket is sized to receive *a single* bottle. Applicant asserts that the recitation of “a single bottle” in claims 1, 14, 24-25, and 28 is sufficiently clear to one skilled in the art in view of the specification and drawings to reflect that only one bottle, rather than a plurality of bottles, is received in each bottle retaining pocket.

In contrast to Applicant’s claimed invention, McGrath discloses bottle support surfaces 46 which form a single partition 47 that faces side walls 27 and extends longitudinally within the crate (*see* col. 8, lines 38-54; FIG. 24). As shown in FIG. 24, several bottles may be placed on either side of partition 47, such that partition 47 does not form part of a retaining pocket sized to receive a single bottle or provide four lateral contact points for each bottle as disclosed and claimed by Applicant. Therefore, there is no motivation or suggestion to combine McGrath with any of the Apps ‘793, Apps ‘572, Apps ‘461, Apps ‘176, Apps ‘352, Hammett, Apps ‘002, or Apps ‘874 references. McGrath does not disclose or suggest the use of more than one partition, and neither McGrath nor the primary references appreciate the bottle stability provided by Applicant’s claimed invention wherein a divider wall as described herein is included in each bottle retaining pocket to provide greater support to the single bottle received therein. Accordingly, McGrath and Apps ‘793, Apps ‘572, Apps ‘461, Apps ‘176, Apps ‘352, Hammett, Apps ‘002, or Apps ‘874 cannot be properly combined to achieve Applicant’s invention.

Also in contrast to Applicant’s claimed invention, Cornelius discloses dividers 15 which create four equal compartments for holding 6-packs of bottles (*see* Abstract, FIG. 1). Cornelius states that “[w]ithin the receptacle area defined by the side and end walls 7 and 8, four generally rectangular cells or 6-pack receiving pockets 10 are provided by a central longitudinal reinforcing and divider rib 11 and a central transverse divider rib 12” (*see* col. 2, lines 42-46). Teaching away from Applicant’s claimed invention, Cornelius further

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discloses how each supporting rib 22 "advantageously centrally underlies a row of the 6-pack bottles" (*see* col. 3, lines 54-58), and how loading paperboard carton 6-packs into the cells 10 is facilitated by dividers 11 and 12 (*see* col. 5, lines 39-64). Therefore, Cornelius discloses dividers which separate packs of multiple bottles contained within a support structure (i.e., the 6-pack carton), and does not disclose or suggest the dividers forming retaining pockets for supporting a single bottle or providing four lateral contact points for each bottle as disclosed and claimed by Applicant. Therefore, Applicant asserts that there is no motivation or suggestions to combine Cornelius and Apps '793, Apps '572, Apps '461, Apps '176, Apps '352, Hammett, Apps '002, or Apps '874. Furthermore, Cornelius and these other references do not recognize the problem solved by Applicant's invention, namely that the plurality of interior divider walls as described herein provides a lighter tray having greater strength and stiffness, as well as greater support for the individual bottles in contact with each divider wall. As such, Cornelius and the cited primary references cannot be properly combined to achieve Applicant's claimed invention.

Therefore, Applicant believes that independent claims 1, 14, 24-25, 28, and 36 are patentably distinguishable over the combination of Apps '793, Apps '572, Apps '461, Apps '176, Apps '352, Hammett, Apps '002, or Apps '874 with either the McGrath or Cornelius references. Accordingly, reconsideration and withdrawal of the rejection of these claims, and their corresponding dependent claims, under 35 U.S.C. § 103(a) is respectfully requested.

#### New claims

New claims 37-39 recite that "the divider walls each include an upper surface connecting the two generally parallel surfaces," wherein support for this amendment can be found throughout the specification, for example at p. 10, lines 1-4 and in FIG. 1. Claims 37, 38, and 39 depend from and contain all the limitations of independent claims 1, 14, and 36, respectively, which are believed to be patentably distinguishable over the cited art for the reasons stated above. Accordingly, claims 37-39 are also believed to be in allowable condition.

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### Conclusion

In summary, Applicant believes that the claims now meet all formal and substantive requirements and that the case is in appropriate condition for allowance. Accordingly, such action is respectfully requested. If a telephone conference would expedite allowance of the case or resolve any further questions, such a call is invited at the Examiner's convenience.

Please charge **\$164.00** to cover the Petition fee of \$110.00 and the additional claims fee of \$54.00, as well as charge any additional fees or credit any overpayments as a result of the filing of this paper, to our Deposit Account No. 02-3978.

Respectfully submitted,

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Date: July 16, 2003

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